CF0000064162

(2)

Single Bench (Crim.....)

माननीय हाईकोर्ट ऑफ ज्युडीकेचर मध्यप्रदेश, सर्किट-जबलपुर (म०प्र०)

फौज०अपील .1150. /2000

12-ए

कृष्णचन्द्र पाणी पुत्र गजपति पाणी,
उम्र 32 साल, निवासी ग्राम घुरनी,
थाना पारला, खेमुन्डी, जिला गजपति,
उड़ीसा प्रदेश

- अभियुक्त/अपीलांट
(केन्द्रीयजेलरायपुरमें)

विरुद्ध

म०प्र०सरकार द्वारा
जिला दण्डाधिकारी, रायपुर, म०प्र०

- रिस्पांडेन्ट

फौजदारी अपील अन्तर्गत धारा- 374 जा०फौ०

4357

Filed by Shri ... Advocate

(20)

IN THE HIGH COURT OF CHHATTISGARH ATBILASPUR

CRIMINAL APPEAL NO.1150/2000

Krishanchand Pani

vs.

State of M.P. (C.G.)

J U D G M E N T

Per Hon.R.S. Garg, J :

The appellant being aggrieved by the judgment dated 16-3-2000 passed in Special Case No.78/99 by the learned Special Judge (N.D.P.S.) convicting the appellant under Section 20(b)(i)/8 of Narcotic Drugs and Psychotropic Substances Act sentencing him to undergo rigorous imprisonment for four years and pay fine of Rs.5000/-, in default of payment of fine to undergo further rigorous imprisonment for six months, has filed this appeal.

2. The prosecution case in brief is that on 3-9-1999 P.W.5 D.R. Singh, the Station House Officer of G.R.P., Raipur received an information that the appellant was carrying contrabands with him. Said D.R. Singh recorded the information, sent the report to the Deputy Superintendent of Police and proceeded to the spot with the witnesses. On the railway platform, he accosted the accused, gave him a notice underSection 50 of the Act and after obtaining his consent searched the attache and the bags carried by the accused. About 45 kg. ganja was seized from the possession of the accused. The seized contrabands were weighed on the spot, two samples

of 50-50 gms were drawn, seized ganja and sample were separately sealed, the accused, the witnesses and the Investigating Officer alongwith the contrabands came back to the police station. The accused was thereafter arrested. A First Information Report was registered and a further information was sent to the immediate Officer superior that the accused has been arrested. Thereafter, the sealed contrabands and the samples were kept in Malkhana. On 7-9-1999 through P.W. 4 Gangaram the samples were sent to F.S.L. who served the said samples to F.S.L. on 8-9-1999. The Forensic Science Laboratory vide its report dated 18.9.1999 informed the Superintendent of Police (Rail), Raipur that the samples were meeting the standard provided for ganja. Armed with the documents, the seizure memos, the statements of the witnesses and the report of the F.S.L., the police filed the challan against the accused. As the applicant abjured the guilt, he was put to trial.

3. The trial court afforded proper opportunity to the parties to lead evidence. After hearing the parties, the learned trial court recorded a finding against the accused, convicted and sentenced him as detailed above.

4. Shri O.P. Singh, learned counsel for the appellant, submits that the independent witnesses P.W.2 Putan Singh and P.W.3 Mahavir have not supported the prosecution case and as the samples remained with P.W.4 Gangaram for almost about one month, therefore, and as the independent witnesses who are available on the railway platform have not been examined by the prosecution or by the investigating officer, therefore also, the accused deserves to be acquitted.

5. Learned counsel for the State submits that the

statements of P.W.2 Putan Singh and P.W.4 Mahavir would clearly show that they had been won over. He submits that almost about 45 kg. ganja was recovered from the possession of the appellant, therefore, the defence of false implication is absolutely ruled-out. He also submits that the applicant is trying to make a capital out of some typographical mistake which ~~is~~ crept ~~kept~~ in the statement of Gangaram (P.W.4), he has prayed for dismissal of the appeal.

6. P.W.5 D.R. Singh has clearly stated that he received the information from an informer that the accused was carrying ganja. He recorded the said information in Rojnamcha Sanha no.219 which has been proved before the Court as Ex.P/16. From his statement, it also appears that he immediately sent the information to the Deputy Superintendent of Police. From his statement, it also appears that he proceeded to the spot for effecting seizure and search. Ex.P/6 proved by ~~khe~~ P.W.5 D.R.Singh shows that accused was informed of his right of being searched either before a gazetted officer or before the Magistrate. The accused instead of exercising his option consented to the search by P.W.5 D.R. Singh. In different number of bags almost about 45 kg. ganja was found. It was weighed on the spot, the samples were drawn and the memos were prepared on the spot. Ex.P/10 is the document which shows that the ganja was weighed, samples were drawn and the contrabands were properly sealed. The accused was brought to the police station where he was arrested under Ex.P/12 and first information report Ex.P/20 was recorded against him. Thereafter, an

information under Ex.P/2 was again sent to the Superintendent of Police (Rail) that in a successful search the accused was arrested. On the material points regarding compliance of the provisions of N.D.P.S.Act, the witness has proved the formalities. P.W.1 S.K.Pandey is a Clerk from the office of Superintendent of Police (Rail). He has proved two facts that in the office of Deputy Superintendent of Police (Rail) the information was received that the Station House Officer (P.W.5 D.R. Singh) had received the information about the contrabands and that a case has been registered against the accused.

7. True it is that P.W.2 Putan Singh and P.W.3 Mahavir have turned hostile but the fact remains whether P.W.5 D.R. Singh is a reliable witness or not.

8. Though various suggestions have been given to D.R. Singh but there are no suggestion to him that he has planted huge quantity of 45 kg. ganja either in the luggag or on the person of the accused. The quantity which has been found with the accused itself would rule out the possibility of plantation and false implication.

9. So far as the delay in sending the sample to the F.S.L. is concerned, the argument raised by the learned counsel for the appellant deserves to be rejected being misconceived. It appears that due to some typographical mistake it was recorded in the cross-examination of P.W.4 Gangaram that he received the sample on 7-8-99 and deposited the same with F.S.L. on 8-9-99. Document Ex.P/14A shows that the sample was given to him on 7-9-99. The impossibility of the argument would also be writ large from the fact that the alleged incident took place on

3-9-99, therefore, about 27 days prior to the incident the sample could not be given to P.W.4. What was seized on 3-9-99 could not be supplied to anybody on 7-8-99.

10. So far as compliance of the mandatory provisions of N.D.P.S. Act are concerned, from the statements of P.W.5 D.R.Singh it would clearly appear that he had scrupulously followed the mandatory requirements of law.

11. The findings recorded by the court below do not suffer with any perversity. After going through the entire evidence afresh, I am unable to hold that the court below was unjustified in convicting and sentencing the appellant.

12. The appeal is dismissed.

Sd/-
R.S. Garg
Judge
25-6-2001.

H/-